

February 3, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Major Larry Crawford
Inspector, Sheriff Office
Ector County Sheriff's Office
P.O. Box 2066
Odessa, Texas 79760

OR99-0316

Dear Major Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121536.

Ector County (the "county") received a request for a "copy of Chief C.B. Choates personnel file." You have included all of the responsive information. You indicate that most of this information has been released, however you seek to withhold information relating to an investigation of sexual harassment. You assert sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

We note that your request for opinion was timely and properly submitted. Although section 552.307 of the Government Code allows a governmental body to rely upon previous determinations and withhold information without requesting an opinion from our offices, such reliance should be exercised with caution. Generally only the specific information that was previously found to be excepted will fall within the ambit of this provision. Open Records Decision 435 (1986); *Houston Chronicle v. Mattox*, 767 S.W. 2d 695 (Tex 1989). For a more detailed discussion of this and the other points you raise, you are directed to the 1998 Open Records Handbook published by our offices and available on line at http://www/AG_Publications/ag_publications.html#handbooks.

As all of the information you seek to withhold falls within the ambit of section 552.103 of the Government Code, we shall limit our discussion to this provision. Section 552.103(a), the "litigation exception," excepts from disclosure

information relating to litigation to which the state or a political subdivision is or may be a party. The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The county must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4(1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You have submitted information to this office showing that the requestor has filed a complaint with the Texas Commission on Human Rights (the "TCHR") alleging sexual harassment. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). By showing that the complaint filed with TCHR is pending, you have demonstrated that litigation is reasonably anticipated. Our review of the records at issue shows that they are related to the anticipated litigation for purposes of section 552.103(a). The investigation report may therefore be withheld.

We note that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2(1982). You are cautioned, however, that information considered confidential by law must not be released to the public. Government Code § 552.352(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as

a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 121536

Enclosures: Submitted documents

cc: Mr. Keely Coghlan, Assistant City Editor
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(w/o enclosures)